



Attorney Docket: 00033.03CON

DR
JPW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Joshua D. Rabinowitz, et al.) Examiner: M. Haghighatian
Serial No.: 10/766,634) Group Art Unit: 1616
Filing Date: January 27, 2004) Confirmation No.: 3768
For: DELIVERY OF DIPHENHYDRAMINE)
THROUGH AN INHALATION ROUTE)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO RESUBMIT TERMINAL DISCLAIMERS
37 C.F.R. 1.182

This petition is respectfully submitted to request resubmission of the attached Terminal Disclaimers previously submitted in the above-captioned patent application.

STATEMENT OF FACTS

The above-captioned application was filed on January 27, 2004. On February 14, 2005, Applicant submitted the following Terminal Disclaimers in connection with the above-referenced application:

Terminal Disclaimer (USSN 10/749,536)	\$65.00
Terminal Disclaimer (USSN 10/153,311)	\$65.00

As customary practice by our office and in a thorough review of our file prior to issuance date of July 4, Applicant realized that the two Terminal Disclaimers listed above incorrectly listed the wrong Serial Number on the form header.

Although the Terminal Disclaimers are shown to have been entered in Pair, Applicant petitions to resubmit the two executed Terminal Disclaimers attached properly identifying the Application Serial Number on the form header.

37 CFR 1.8
CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Petition, Assistant Commissioner for Patents, Washington, D.C. 20231 on June 30, 2006.

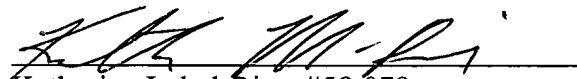
Signature: *Veronica Doucet*
Name: Veronica Doucet

On the basis of the foregoing, Applicant respectfully requests that the two executed Terminal Disclaimers be resubmitted and made part of the application record as discussed above.

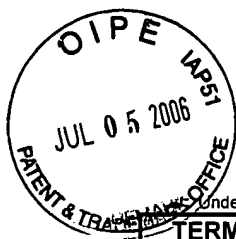
PETITION FEE

I hereby authorize the Petition fee in the amount of \$130.00 as enclosed herewith. The undersigned hereby authorizes the charge of any required fees not included or any deficiency of fees submitted herewith to be charged to deposit account No. 19-5117.

Respectfully submitted,


Katherine Lobel-Rice, #58,079
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PTO/SB/25 (09-04)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**TERMINAL DISCLAIMER TO OBVIATE A PROVISIONAL DOUBLE PATENTING
REJECTION OVER A PENDING "REFERENCE" APPLICATION**

Docket Number (Optional)

00033.03CON

In re Application of: Rabinowitz, et al.

Application No.: 10/766,634

Filed: January 27, 2004

For: Delivery of Diphenhydramine Through an Inhalation Route

The owner*, Alexza Pharmaceuticals, Inc., of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending **reference** Application Number 10/153,311, filed on May 21, 2002, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said **reference** application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending **reference** application. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and any patent granted on the **reference** application are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of any patent granted on said **reference** application, "as the term of any patent granted on said **reference** application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending **reference** application," in the event that: any such patent: granted on the pending **reference** application: expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Check either box 1 or 2 below, if appropriate.

1. ☐ For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

2. ☒ The undersigned is an attorney or agent of record. Reg. No. 58,079

Signature

June 30, 2006

Date

Katherine Lobel-Rice

Typed or printed name

303.268.0066

Telephone Number

- ☐ Terminal disclaimer fee under 37 CFR 1.20(d) is included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

*Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner).

Form PTO/SB/96 may be used for making this statement. See MPEP § 324.

This collection of information is required by 37 CFR 1.321. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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